SINGLE BENCH

(4)

P.R. No. 867/06
Presented by Shri Aruna Das
dated 16/2/06

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 843 / 2006

PETITIONER : Rajbir Singh Vishth, S/o Late Shri Bhagat Singh; Aged about 23 years, resident of C/o Sunil Singh Rawat, New Colony Sector No.1, Quarter No.525/3, Jabalpur (MP)

Versus

RESPONDENTS :

1) State of Chhattisgarh Through the Secretary, Home Department, DKS Bhawan, Raipur, District– Raipur (CG)

2) The Director General of Police, State of Chhattisgarh, Police Headquarter, Raipur, District - Raipur (CG)

3) The Assistant Inspector General of Police, (Admn.), State of Chhattisgarh, Police Head Quarter, Raipur, District-Raipur(CG)

4) The Commandant, 6th Battalion Chhattisgarh Shastra Police, Raigarh, District-Raigarh (CG)

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(28)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.843/2006

Rajbir Singh

Vs.

State of C.G. & ors.

ORDER

(28) (26)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.843/2006

Rajbir Singh

Vs.

State of C.G. & ors.

Shri P. Diwakar, Sr. Adv., with Shri Kunal Das, Adv., for the petitioner.

Shri Satish Gupta, Dy. Government Advocate, for the State.

ORDER

Per Hon. Fakhruddin, J:

The present petition has been filed by the petitioner under Article 226/227 of the Constitution of India for quashing the order dated 6/4/2002 (Annex.P/4) issued by respondent no.3 and order dated 26/8/2004 (Annex.P/5) issued by respondent no.4.

2. Brief facts of the case are that the petitioner's father was serving in 6th Battalion, who died on 30/8/1999 while in service. The death certificate is Annexure-P/1. The petitioner applied for compassionate appointment before the respondents. The prayer for compassionate appointment was denied vide Annexure-P/4 dated 6/4/2002 on the ground that the petitioner has passed the High School Examination from the Board of Higher Secondary, Uttar Pradesh. The petitioner again made a detailed submission, which was replied vide Annexure-P/5 dated 26/8/2004.

3. Learned Senior counsel appearing for the petitioner submits that since the petitioner's father was the Member of the Force and was posted in the field, as such his family members were residing away from him in Uttar Pradesh where the children got the education. He further submits that merely because the petitioner has received the education in other

State, the prayer for compassionate appointment cannot be denied. He also submits that even otherwise as per the policy of the State Government, the petitioner is entitled for the compassionate appointment. He also submits that the financial condition of the petitioner is very poor and they are facing hardship.

4. Learned counsel for the State on the other hand submits that though initially there was a circular for not providing the compassionate appointment to the persons who have passed the High School Examination from the other State, but now the State of Chhattisgarh considered it on 5/3/2005 and the doubt in anybody's mind has been removed. He referred to the Orders of the State of Chhattisgarh.

5. Perused the record. The petitioner's father was serving in 6th Battalion, who died on 30/8/1999 while in service. The petitioner applied for compassionate appointment before the respondents. The prayer for compassionate appointment was denied vide Annexure-P/4 dated 6/4/2002 on the ground that the petitioner has passed the High School Examination from the Board of Higher Secondary, Uttar Pradesh. The petitioner again made a detailed submission, which was replied vide Annexure-P/5 dated 26/8/2004 that the petitioner's application for compassionate appointment was forwarded to the Deputy Inspector General of Police, Bilaspur on 22/11/2001, from there to the Inspector General of Police, Bhilai and from there to the Addl. Director General of Police (Administration) on 18/1/2002, wherefrom the instructions were received that since the petitioner has passed the High School Examination from the Board of Higher Secondary, Uttar Pradesh, as such he is not eligible for compassionate appointment.

(29) (28)

6. The circular dated 5/3/2005 is also perused, which goes to show that if the children of the deceased employee got the education in the State other than the State of C.G., then also they will be called local residents of Chhattisgarh. The circular is pertinent, which reads as under:

छत्तीसगढ़ शासन

सामान्य प्रशासन विभाग

मंत्रालय, दाउ कल्याण सिंह भवन, रायपुर 492001

कमांक 180/1138/2004/1–3 *रायपुर,दिनांक 05 मार्च,2005*

प्रति,

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल,
समस्त विभागाध्यक्ष,
समस्त कलेक्टर,
समस्त मुख्य कार्यपालन अधिकारी(जिला पंचायत),
छत्तीसगढ़।

विषयः– *छत्तीसगढ़ राज्य के स्थानीय निवासियों के लिए राज्य से बाहर प्राप्त की गई शिक्षा को शासकीय सेवाओं के लिए मान्य करने बाबत।*

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अनुकम्पा नियुक्ति के एक प्रकरण में एक विभाग ने इस बिन्दु पर मार्गदर्शन चाहा है कि मृतक शासकीय कर्मचारी के पुत्र द्वारा छत्तीसगढ़ राज्य से बाहर अन्य राज्य से शिक्षा प्राप्त की है, तो उसे शासकीय सेवा में नियुक्ति दी जा सकती है अथवा नहीं?

2. *स्थानीय निवासियों की परिभाषा के संबंध में जारी परिपत्र दिनांक 17 जून,2003,परिपत्र दिनांक 18–8–2003 द्वारा संशोधित किया गया है। परिपत्र के पैरा–1 में दो प्रकार की शर्तें है। जिनकी पूर्ति करने पर ही व्यक्ति छत्तीसगढ़ का स्थानीय निवासी होगा। इनमें से एक शर्त छत्तीसगढ़ क्षेत्र में शिक्षा प्राप्त करने संबंधी है। किन्तु उपरोक्त परिपत्र की पैरा–3 में किन्हीं शर्तो का उल्लेख नहीं है। पैरा–2 निम्न प्रकार है:–*

(क) *छत्तीसगढ़ राज्य को आबंटित अखिल भारतीय सेवाओं के अधिकारीगण तथा उनकी पत्नी/पति अथवा संतान।*

(ख) *छत्तीसगढ़ राज्य शासन के अधिकारी/कर्मचारी तथा उनकी पत्नी पति अथवा संतान।*

(ग) *छत्तीसगढ़ में संवैधानिक या अन्य विधिक(Statutory)पदों पर राष्टपति द्वारा नियुक्त व्यक्ति तथा उनकी पत्नी/पति अथवा संतान।*

(30) (29)

(घ) राज्य शासन के अधीन स्थापित संस्थाओं या निगम या मण्डल या आयोग में पदस्थ पदाधिकारी/अधिकारी/कर्मचारीतथा उनकी पत्नी/पति अथवा संतान।

3. उपरोक्त से स्पष्ट है कि उपरोक्त उल्लेखित परिपत्र की पैरा–2 में जिन श्रेणी के व्यक्तियों का उल्लेख किया गया है वे छत्तीसगढ़ के स्थानीय निवासी मान्य हैं, इनके लिए यह आवश्यक नहीं है कि ये परिपत्र की पैरा–1 की शर्तों की पूर्ति करते हों। अर्थात इन श्रेणी के व्यक्ति छत्तीसगढ़ क्षेत्र में कोई शिक्षा ग्रहण न भी किए हों तो भी वे छत्तीसगढ़ के स्थानीय निवासी कहलायेंगे।

4. उपर पैरा–1 में जिस विभाग ने इस विषय में शंका व्यक्त की थी उस विभाग को योग्य मार्गदर्शन दिया जा चुका है। अन्य किसी विभाग में किसी स्तर पर कोई शंका/अस्पष्टता न हो इस दृष्टि से उपर पैरा–2 में स्थिति स्पष्ट कर दी गई है।

5. विभागों के मैन्युअल/सेवा भरती नियमों में नियुक्ति के संबंध में ऐसा प्रावधान हो सकता है कि उम्मीदवारों का शिक्षा ग्रहण म0प्र0/छ0ग0 में ही होना चाहिए। यदि ऐसा प्रावधान अंकित है तो विभाग को चाहिए कि अपने मैन्युअल/सेवा भरती नियम में इस परिपत्र के अनुसार आवश्यक संशोधन की कार्यवाही करें।

6. अतः अनुकम्पा नियुक्ति के प्रकरण में स्थानीय निवासी का निर्धारण कृप्या उपरोक्त स्थिति के प्रकाश में किया जाये।

हस्ता/–
(एस0आर0सेजकर)
अवर सचिव,
छत्तीसगढ़ शासन,सामान्य प्रशासन विभाग

7. The above circular bearing No.180/1138/2004/1-3 Raipur dated 5-3-2005 has been issued by the Government of Chhattisgarh, General Administration Department in respect of accepting the education obtained from outside the State in Government service for local residents of Chhattisgarh. This circular was issued pursuant to guidance sought by one of the Departments in the matter of compassionate appointment on the ground that the son of the deceased Government employee obtained education from other State outside the State of Chhattisgarh, then he may be appointed in Government service or not. It is stated in the

(31) (30)

circular dated 5-3-2005 that the circular dated 17-6-2003 issued in regard to definition of local resident has been amended by circular dated 18-8-2003. There are two types of conditions in para 1 of the circular, on fulfilling of them the person will be treated as local resident of Chhattisgarh. One of the conditions is regarding obtaining education in the area of Chhattisgarh. But in para 3 of the said Circular, no condition is mentioned. Para 2 says about (a) the officers and their wives/husbands or children of All India Services who are allocated to the State of Chhattisgarh; (b) officers/employees of the State of Chhattisgarh and their wives/ husbands or children; (c) persons and their wives/husbands or children, who are appointed by the President on Constitutional or Statutory posts; and (d) office bearers/Officers/employees and their wives/husbands or children who are posted in Board, Corporation or the Institutions established under the State Government. It is further stated in the circular dated 5-3-2005 that it is clear from the above that the class of persons mentioned in Para 2 of the Circular are recognized as local residents of Chhattisgarh. It is not necessary for them that they fulfill the conditions of Para 1 of the Circular, viz. if they have not obtained any education in Chhattisgarh, then also they will be called local residents of Chhattisgarh. It is also stated in the circular that the Department, which had expressed its doubt in this subject, suitable guidance has been given to that department. In para 2 of the circular, situation has been cleared so that no other department may raise such a doubt. The circular dated 5-3-2005 also states that in manuals of the Departments/Service Recruitment Rules there may be a provision in respect of appointment that the candidate had obtained the education in Madhya Pradesh/ Chhattisgarh. If such a provision has been mentioned, then the said

department shall initiate the proceedings for amendment. Therefore, in the matter of compassionate appointment, assessment of local residents shall be done in the light of the abovementioned conditions of circular.

8. In view of the clear instructions issued by the State Government vide circular dated 5-3-2005, the order refusing to issue appointment order to the petitioner on the ground that he has studied in Uttar Pradesh and as such not entitled for appointment, is not sustainable.

9. We are living in the nation where the person has right to get the children educated anywhere in any State. Even otherwise, the very object of compassionate appointment is to enable the family to tide over the sudden crisis.

10. The Apex Court has dealt with the matter in the case of ***State of Manipur vs. Md. Rajaodin*** reported in ***2003 (7) SCC 511*** has held as under :

> *"…. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress."*

11. The matter has been pending since long without justifiable reason. In the instant case the appointment has been denied and the petitioner has been deprived of the benefit of compassionate appointment. There is no justification in rejecting the application for compassionate appointment on the ground that the petitioner has passed the High School Examination from the Board of Higher Secondary, Uttar Pradesh i.e. from other State.

12. Accordingly, this petition is allowed with costs. Order dated 6/4/2002 (Annex.P/4) issued by respondent no.3 and order dated 26/8/2004 (Annex.P/5) issued by respondent no.4 are set aside.

Counsel fee as per scale.

Sd/-
Fakhruddin
Judge